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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

26 KEITH ANDREWS, an individual,  
27 TIFFANI ANDREWS, an individual,  
BACIU FAMILY LLC, a California  
limited liability company, ROBERT  
BOYDSTON, an individual, CAPTAIN  
JACK'S SANTA BARBARA TOURS,  
LLC, a California limited liability  
company, MORGAN CASTAGNOLA, an  
individual, THE EAGLE FLEET, LLC, a  
California limited liability company,  
ZACHARY FRAZIER, an individual,  
MIKE GANDALL, an individual,  
ALEXANDRA B. GEREMIA, as Trustee  
for the Alexandra Geremia Family Trust  
dated 8/5/1998, JIM GUELKER, an  
individual, JACQUES HABRA, an  
individual, ISURF, LLC, a California  
limited liability company, MARK

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**Case No. 2:15-cv-04113-PSG-JEM**

[Consolidated with Case Nos. 2:15-CV-04573 PSG (JEMx), 2:15-CV-4759 PSG (JEMx), 2:15-CV-4989 PSG (JEMx), 2:15-CV-05118 PSG (JEMx), 2:15-CV-07051- PSG (JEMx)]

**DECLARATION OF  
SHANNON R. WHEATMAN,  
PH.D., IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION**

Date: November 7, 2016

Time: 1:30 p.m.

Courtroom: Hon. Philip S. Gutierrez

1 KIRKHART, an individual, MARY  
2 KIRKHART, an individual, RICHARD  
3 LILYGREN, an individual, HWA HONG  
4 MUH, an individual, OCEAN ANGEL IV,  
5 LLC, a California limited liability  
6 company, PACIFIC RIM FISHERIES,  
7 INC., a California corporation, SARAH  
8 RATHBONE, an individual,  
9 COMMUNITY SEAFOOD LLC, a  
10 California limited liability company,  
11 SANTA BARBARA UNI, INC., a  
12 California corporation, SOUTHERN CAL  
13 SEAFOOD, INC., a California  
14 corporation, TRACTIDE MARINE  
15 CORP., a California corporation, WEI  
16 INTERNATIONAL TRADING INC., a  
17 California corporation and STEPHEN  
18 WILSON, an individual, individually and  
19 on behalf of others similarly situated,

20 Plaintiffs,

21 v.

22 PLAINS ALL AMERICAN PIPELINE,  
23 L.P., a Delaware limited partnership,  
24 PLAINS PIPELINE, L.P., a Texas limited  
25 partnership, and JOHN DOES 1 through  
26 10,

27 Defendants.

28

I, Shannon R. Wheatman, being duly sworn, hereby declare as follows:

1. I am the president of Kinsella Media, LLC (“KM”), an advertising and notification firm in Washington, D.C. specializing in the design and implementation of class action and bankruptcy notification programs. My business address is 2001 Pennsylvania Avenue NW, Suite 300, Washington, D.C. 20006. My telephone number is (202) 686-4111.

2. KM was retained to provide an opinion on whether we can identify and notify Class Members in *Andrews v. Plains All American Pipeline, L.P.* (“Andrews Class”).

## RELEVANT EXPERIENCE

3. I have served as a qualified class action notice expert in many major class actions. State and federal courts have accepted my analyses and expert testimony on whether information is effectively communicated to people. My curriculum vitae is attached as **Exhibit 1**.

4. I have testified in court as an expert in *State v. Farmer Group Inc.*, No. D-1-GV-02-002501 (D. Ct. Tex., Travis County); *Scharfstein v. BP West Coast Products, LLC*, No. 1112-17046 (Cir. Ct. Ore.); *Spillman v. RPM Pizza, Inc.*, No. 10-349 (M.D. La.); *PRC Holdings, LLC v. East Resources, Inc.*, No. 06-C-81 (Cir. Ct. W. Va.); *Guidry v. American Public Life Ins. Co.*, No. 2008-3465 (14th Jud. Dist. Ct., Calcasieu Parish); *Webb v. Liberty Mutual Ins. Co.*, No. CV-2007-418-3 (Cir. Ct. Ark); and *Beasley v. The Reliable Life Insurance Co.*, No. CV-2005-58-1 (Cir. Ct. Ark). I have been deposed as an expert in *Hale v. CNX Gas Company, LLC*, No. 10-CV-59 (W.D. Va.) and *Thomas v. A. Wilbert Sons, LLC*, No. 55,127 (18th Jud. Dist. Ct., Iberville Parish).

5. I have direct experience with a case with similar class claims, *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico* on April 20, 2010, MDL No. 2179 (E.D. La.) for the Deepwater Horizon Economic and Property Damages Settlement with BP as well as the settlement with Halliburton. Specifically, KM was retained to analyze and review the notice programs in the BP settlement and develop and design the notice program in Halliburton.

6. In addition, I have been involved in some of the largest and most complex national notification programs in the country, including: *In re: Transpacific Passenger Air Transportation*

1        *Antitrust Litigation*, MDL No. 1913 (N.D. Cal.) (involving millions of international airline  
 2 passengers); *In re Katrina Canal Breaches Consolidated Litig.*, No. 05-4182 (E.D. La.)  
 3 (settlement obtained for Hurricane Katrina and Rita survivors); *In re Dynamic Random Memory*  
 4 *Antitrust Litig.*, MDL No. 1486 (N.D. Cal.) (involving tens of millions of consumers); *In re TFT-*  
 5 *LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827 (N.D. Cal.) (involving millions of indirect  
 6 purchasers); *Kramer v. B2Mobile, LLC*, No. 10-cv-02722 (N.D. Cal.) (text messaging case  
 7 involving tens of millions of consumers); *In re Enfamil LIPIL Mkt'g & Sales Pract. Litig.*, No.  
 8 11-MD-02222 (S.D. Fla.) (consumer fraud settlement involving millions of infant formula  
 9 purchasers); *Fogel v. Farmers Group, Inc.*, No. BC300142 (Cal. Super. Ct., LA County) (\$455  
 10 million settlement involving tens of millions of insureds); *Lockwood v. Certegy Check Services,*  
 11 *Inc.*, No. 8:07-CV-1434 (M.D. Fla.) (data theft settlement involving over 37 million consumers);  
 12 *Grays Harbor Adventist Christian School v. Carrier Corp.*, No. 05-05437 (W.D. Wash.)  
 13 (defective product settlement involving high efficiency furnaces); and many others.

14        7.      Courts have admitted my expert testimony on quantitative and qualitative  
 15 evaluations of the effectiveness of notice programs, and several courts have commented  
 16 favorably, on the record, regarding the effectiveness of notice plans I have done. Selected  
 17 judicial comments are included in the attached curriculum vitae.

18        8.      My qualifications include expertise in the form and content of notice. For  
 19 example, while serving with the Federal Judicial Center (“FJC”), I played an integral part in the  
 20 development of the illustrative, “model” forms of notice designed to satisfy the plain language  
 21 requirements of Federal Rule of Civil Procedure 23(c)(2). This research formed the basis for my  
 22 doctoral dissertation, *The Effects of Plain Language Drafting on Layperson’s Comprehension of*  
 23 *Class Action Notices* (2001) (Ph.D. dissertation, University of Georgia). To assist judges and  
 24 attorneys, both in state and federal courts, the FJC posted the notices at [www.fjc.gov](http://www.fjc.gov).

25        9.      I have authored and co-authored articles on notice and due process. I believe  
 26 notice and due process depend upon clear communication with the people affected. *See, e.g.*,  
 27 Shannon R. Wheatman & Katherine M. Kinsella, *International Class Action Notice*, in *WORLD*  
 28 *CLASS ACTION: A GUIDE TO GROUP AND REPRESENTATIVE CLASS ACTIONS AROUND THE GLOBE*

1 673-686 (Paul Karlgodt ed., 2012); Katherine Kinsella & Shannon Wheatman, *Class Notice and*  
 2 *Claims Administration, in PRIVATE ENFORCEMENT OF ANTITRUST LAW IN THE UNITED STATES: A*  
 3 *HANDBOOK* 338-348 (Albert A. Foer & Randy M. Stutz eds., 2012); Shannon R. Wheatman &  
 4 Terri R. LeClercq, *Majority of Class Action Publication Notices Fail to Satisfy Rule 23*  
 5 *Requirements*, 30 REV. LITIG. 53 (2011); Katherine Kinsella & Shannon R. Wheatman, *Class*  
 6 *Notice and Claims Administration, in THE INTERNATIONAL PRIVATE ENFORCEMENT OF*  
 7 *COMPETITION LAW* 264-274 (Albert A. Foer & Jonathan W. Cuneo eds., 2010); Todd B. Hilsee,  
 8 Shannon R. Wheatman & Gina M. Intrepido, *Do you really want me to know my rights? The*  
 9 *ethics behind due process in class action notice is more than just plain language: A desire to*  
 10 *actually inform*, 18 GEO. J. LEGAL ETHICS 1359 (2005); Todd B. Hilsee, Gina M. Intrepido &  
 11 Shannon R. Wheatman, *Hurricanes, Mobility and Due Process: The “Desire-to-Inform”*  
 12 *Requirement for Effective Class Action Notice Is Highlighted by Katrina*, 80 TULANE LAW REV.  
 13 1771 (2006).

14 **OVERVIEW OF CLASS DEFINITION**

15 10. I have reviewed the the *Plaintiffs’ Corrected Consolidated Second Amended*  
 16 *Complaint* in the Andrews Class (Filed April 4, 2016, Dkt. 88) and Plaintiffs’ *Memorandum in*  
 17 *Support of Plaintiffs’ Motion for Class Certification* (“Motion for Certification”).

18 11. The Motion for Certification defines the class to include four damages subclasses:  
 19 (1) fisher and fish industry, (2) property owner and lessee, (3) oil industry, and (4) business  
 20 tourism.

21 12. The subclasses proposed in Andrews are similar to the groups included in the  
 22 Deepwater Horizon settlements.

23 **NOTIFYING CLASS MEMBERS**

24 13. The key question in any notice program is what constitutes “the best notice  
 25 practicable”? When comprehensive mailing lists of class members exist, direct mail should be  
 26 the primary method used for notification. When comprehensive mailing lists are unavailable or  
 27

cannot be compiled through reasonable effort, then “notice by publication will suffice under Rule 23(c)(2) and under the due process clause.”<sup>1</sup>

14. Direct mail can be sent to any individual or business that contacted Defendants to report property or economic losses, or damages to their occupation. In addition, property tax records can be searched to identify property owners, and mailing lists can be purchased from data brokers for businesses that fall under the fish industry, business tourism, and oil industry subclasses. In turn, we can ask these businesses to notify any current or former employee who may have been impacted by the oil spill.

15. In addition, the notice that is targeted to the fish industry should include publications that are culturally appropriate to reach Vietnamese, Mandarin, and Spanish speakers.

16. Therefore, the best notice practicable in this case would include direct notice to reasonably identifiable Class Members and paid media advertising to reach any unknown Class Members. This mixture of direct notice and paid media was done in the *Deepwater Horizon* notice programs and is routine in class action notification programs and has consistently been upheld by courts as “the best notice practicable.”

## **CLASS SELF-IDENTIFICATION**

17. A well-designed, plain language notice in the Andrews case will provide people with the information they need to identify themselves as Class Members.

18. In my opinion, the subclasses are well-defined through objective criteria that people can use to determine whether they are impacted by the class action.

<sup>1</sup> *Carlough v. Amchem Prods., Inc.*, 158 F.R.D. 314, 325 (E.D. Pa. 1993) (citing *Mullane*, 339 U.S. 306, 317-18 (1950)).



## **CERTIFICATE OF SERVICE**

I, Robert J. Nelson, hereby certify that on August 22, 2016, I electronically filed Plaintiffs' **DECLARATION OF SHANNON R. WHEATMAN, PH.D., IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION** with the Clerk of the United States District Court for the Central District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

/s/ Robert J. Nelson  
Robert J. Nelson